Supreme Court, U.S.
FILED

(1)

No. 95-1050 DEC 28 1995

OFFICE OF THE CLERK

THE SUPREME COURT OF THE UNITED STATES

(October Term 1995)

PEOPLES BANK OF
BLOOMINGTON,
as Successor Trustee of trusts
created by the Will of George F.
Dick, Jr., deceased, and as Trustee
of trusts created by the Will of
Althea M. Dick, deceased,
Plaintiff,

vs.

GEORGE F. DICK III, et al.,
Defendants,

(Helen A. Dick,
Petitioner-Appellant,

vs.

Peoples Bank of Bloomington,
Respondent-Appellee).

On Petition from the Illinois Supreme Court
for Review on a Writ of Certiorari

PETITION FOR WRIT OF CERTIORARI

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31 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the Illinois reviewing courts behave erratically and/or contrary to Illinois authorities---when, e.g., the Appellate Court allowed the Bank's motion to dismiss and/or when the Illinois Supreme Court refused to file a petition for rehearing?

2. Has petitioner been deprived of due process and/or equal protection (U.S. Const. Amend. 5 and/or 14)?

3. Does this case indicate that due process and/or equal protection (U.S. Const. Amend. 5 and/or 14) is not possible without, among other things:

(a) a nationally uniform judicial system?

(b) a national plan as to the rights and needs of children, including but not limited to a national school system in which Law is one of the subjects taught?

(c) government that is republican (U.S. Const. Art. 4, sec. 4), democratic, and affordable?

4. Were the directors of the Bank and/or the one-bank holding company correct when describing (on the books of the Bank)---as conversion---the transfer of all of the Capital Stock of the Peoples Bank of Bloomington to the use and beneficial enjoyment of a one-bank holding company?

5. Is Helen A. Dick entitled to the relief she has prayed for---and should the case be returned to Judge Richard M. Baner, of Woodford County, for (among other things) the accountings for which she has prayed?

AS TO PARTIES AND PARENT COMPANIES

1. Pursuant to the Stock Holders Ledger of the Peoples Bank of Bloomington, all of the Capital Stock of said bank (an Illinois state bank) and other property of said bank (including but not limited to its Stock Holders Ledger) was converted in mid-1972 to the use and beneficial enjoyment of Peoples Mid-Illinois Corporation (a Delaware corporation and a one-bank holding company).

2. Said Peoples Mid-Illinois Corp. purchased the First National Bank of Normal in or about 1985, with funds derived from the operation of the aforesaid Peoples Bank of Bloomington. Thereafter, the two banks were operated as one Illinois state bank ("Peoples Bank") under the 1869 Charter of said Peoples Bank of Bloomington.

3. Effective on or about March 8, 1995, Commerce Bancshares (a Missouri corporation) acquired possession and control of the aforesaid banks (and the aforesaid holding company, Peoples Mid-Illinois Corp.).

4. Information published by Commerce Bancshares is peculiar! Pursuant to information as to "Director Compensation" in the notice of the April 19, 1995 annual meeting of shareholders:

> "Non-employee directors of the Company are required (emphasis added) to participate in the Stock Purchase Plan for Non-Employee Directors. Under this Plan *** the Company contributes to the account of such director an amount equal to 25% of the compensation credited to the director's account."

According to an October 23, 1995 release:

> "Commerce Bancshares, Inc. is a registered bank holding company offering a full line of banking services, including investment management and securities brokerage. The Company operates in over 220 locations in Missouri, Illinois, and Kansas. The Com-

pany also has five other operating subsidiaries involved in mortgage banking, credit related insurance, venture capital, and real estate activities."

Your petitioner respectfully suggests that directors who must be bullied into and/or required to participate in a plan yielding them 25% interest---are not competent to manage even their own financial affairs.

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REQUEST FOR WRIT OF CERTIORARI

Petitioner Helen A. Dick, pro se, respectfully asks that a writ of certiorari issue to review the judgments of the reviewing courts of Illinois---which were entered in this case in 1995---and to review certain judgments of the Circuit Court of Illinois, which were entered in this case in 1994 and 1984.

28 U.S.C. sec. 2403(a) and/or sec. 2403(b) may apply, thus (pursuant to Supreme Court Rule 29.4) this petition will be served on the Solicitor General of the United States and on the Attorney General of the State of Illinois.

BASIS FOR JURISDICTION

Count I of the Bank's September 22, 1982 pleading (Appendix p. A-14) raised an important federal question as to the conversion of capital stock of a bank to the use and beneficial enjoyment of a one-bank holding company:

> "8. ***[O]n or about June 3, 1972, all of plaintiff's shares***were exchanged on a 1 for basis for shares of Peoples Mid-Illinois Corporation, a Delaware corporation and a one bank holding company."

The Illinois Supreme Court's order denying Helen A. Dick's petition for leave to appeal was entered October 4, 1995. Said court refused (on or about October 24, 1995, Appendix p. A-199) to even file her petition for rehearing---which damaged Helen A. Dick by cutting down (by three weeks) the 90 days a party normally has to prepare and file a petition for writ of certiorari. This, in itself, raises an important federal question that should also be settled by the Supreme Court of the United States (Supreme Court Rule 10), namely: is due process and/or equal protection (U.S. Const. Amend. 5 and/or 14) possible without a nationally uniform judicial system? Other questions fairly included (U.S. Supreme Court Rule 14.1) appear at page 1 of this petition and in the following argument.

THE PERTINENT TEXT OF CONSTITUTIONAL PROVISIONS AND STATUTES CITED IS SET OUT IN THE TEXT OF PETITIONER'S ARGUMENT AND/OR IS SET OUT AT PAGE A-207 OF THE SEPARATE APPENDIX.

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STATEMENT OF THE CASE

A. Background Facts

Testators George F. Dick, Jr. and Althea M. Dick (born Helen Althea Marsh) had three natural children: Helen Dick (born in 1911), Eleanor Dick (born in 1912) and George F. Dick III (born in 1919)---all of whom died in 1992. Trust beneficiary Helen A. Dick (born in 1932) was the only child of Eleanor's first marriage; was named at birth for her maternal grandmother ("Helen Althea"); and was legally adopted by her maternal grandparents in November 1935, in connection with Eleanor's first divorce. Eleanor soon remarried (becoming Eleanor D. Lyon) and Helen A. Dick continued to live with and be parented by her aforesaid adoptive parents, George F. Dick, Jr. and Althea M. Dick.

Your petitioner was tutored at home (by a certified teacher) for about 1 1/2 years. She then attended Illinois public schools (grades 3 and 4 in a neighborhood school, grades 5-12 in the practice school of what then was Illinois State Normal University) before attending college.

Under the terms and provisions of the will of George F. Dick, Jr. (who died May 8, 1955), his widow, Althea M. Dick (who died October 10, 1976), was given "full possession and sole management" of all her late husband's property for "as long as she shall live." One of the Bank's attorneys has admitted that said will gave Althea the right to sell "any of the property for her own purposes" (September 1, 1994 transcript, Vol. XIII, p. 17 at 13-18 and p. 18 at 15-16; said transcript is not reproduced in the separate Appendix).

The only trust created by George Jr.'s said will was f/b/o the said three daughters (including Helen A. Dick) and was not to be funded until after Althea's death. Said trust was to continue as an express active trust until the death of Eleanor (who died January 12, 1992, less than two years before the January 11, 1994 filing of Helen A. Dick's verified "Petition to Vacate Order(s) Obtained by Fraud upon the Court,", Appendix p. A-47).

Beginning on or about the date of Althea's death (October 10, 1976) and continuing until on or about December 26, 1978, George F. Dick III became executor of Althea's estate---and he also began acting as testamentary trustee of the aforesaid trust f/b/o his three sisters (including Helen A. Dick).

On or about December 26, 1978, Peoples Bank of Bloomington became successor trustee of the aforesaid George F. Dick, Jr. trust---and trustee of the trusts created by the 1969 will of Althea M. Dick. Copies of the 1953 mutual will of George F. Dick, Jr. and Althea's said 1969 will are, respectively, at Appendix pages A-76 and A-81, where they appear as Exhibits "B" and "C" to Helen A. Dick's aforesaid petition to vacate (Appendix p. A-47). Although your petitioner had several times informed the Bank of wrongdoing by its predecessor fiduciary (George F. Dick III)---by May 1982, the Bank had not filed any action as to these estates (e.g. for will construction or for accountings).

In May 1982, Helen A. Dick was living in Maine; learned that her first grandchild was on the way; and (from what she had seen of the father-to-be) believed that her daughter and grandchild would need financial help in amounts your petitioner could not provide until and/or unless these estates were straightened out. Helen A. Dick filed a diversity action against the Bank in the United States District Court for the District of Maine (Civil Action No. 82-0109-B)---essentially seeking an injunction to require the Bank, as trustee, to file suit against said George F. Dick III. She dismissed that action (as of right) by a notice of dismissal supported by her affidavit in which she deposed, among other things, that the Bank had taken a deposition from her on July 1, 1982, and that the main thrust of the questioning clearly indicated intent to annoy, embarrass, oppress and intimidate her. She subsequently informed the Bank's directors that documents as to that diversity action were on record in McLean County (in the probate file of the estate of George F. Dick, Jr.)---for their convenience.

B. Facts as to this Case in 1982-1984

September 22, 1982 - the Bank commenced this action, praying for will construction and for accountings from George F. Dick III. In its pleading (Appendix p. A-14), the Bank alleged (among other things) that property of the estate of George F. Dick, Jr. had been in "trust" during Althea's lifetime---and alleging that George III had been testamentary "trustee" during Althea's lifetime.

January 18, 1983 - the Bank's Counts V and VII were dismissed.

February 15, 1984 - the Bank dismissed beneficiary Helen A. Dick completely out of the main case, by voluntarily dismissing its Count VI (a count which had prayed only for discovery).

February 21, 1984 - Circuit Judge Richard M. Baner entered an order (Appendix p. A-13) finding that Helen A. Dick was not a party to the causes of action alleged by the Bank in the only counts then remaining (Counts I, II, III and IV) and that she could not participate in the litigation of pending cross-motions (the Bank's and George III's) for summary judgment.

March 2, 1984 - Judge Baner entered a summary judgment order (Appendix p. A-11) as to some issues. As to the Bank's Count I, he found (among other things) that any assignment of interest in shares by Althea prior to her death was violative of the provisions of George F. Dick, Jr's. will. George III was directed to account for all shares for the period beginning with the March 31, 1959 transfer of 80 shares of the Bank (to George III from the estate of George F. Dick, Jr.) to the October 10, 1976 date of Althea's death.

March 8, 1984 - the Bank filed an Amended Count IV (Appendix p. A-44) as to Althea's estate.

March 14, 1984 - although a bench trial had been scheduled to begin that date, the Bank and George III entered a dismissal stipulation (without notice to or consent of Helen A. Dick) and filed same, together with an attached proposed order ---which Judge Baner entered (Appendix p. A-9). Helen A. Dick

was in the courtroom and voiced her objection to the Bank's dismissing its action; however, she was not a party and thus had no standing to prevent said dismissal. Judge Baner offered to review (and to consider approving) the settlement agreement if the trustee (the Bank) requested. The Bank refused his offer. The settlement agreement thus was not before Judge Baner for his consideration.

After dismissing its action against George III, the Bank continued to administer the George F. Dick, Jr. and Althea M. Dick trusts without compelling any accounting from George III (including but not limited to the accounting required by Judge Baner's aforesaid March 2, 1984 order). The Bank continued to act as trustee of said George Jr. Trust until after the January 12, 1992 death of Eleanor D. Lyon. The Bank is, to date, continuing to administer the Althea M. Dick trust f/b/o/ Helen A. Dick (your petitioner) without, among other things, the accounting as to holding company shares for which the Bank had prayed in its Count IV.

C. Facts as to this Case in 1994 and 1995

January 11, 1994 - Helen A. Dick filed a verified petition under section 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1401), entitled "Petition to Vacate Order(s) Obtained by Fraud upon the Court" (Appendix p. A-47), in which she alleged, among other things. (1) that the Bank had settled a million dollar "net worth case" for only $120,000; (2) that the Bank had failed to bring the Circuit Court's attention to the fact that it was not authorized, by either of the wills in question or by any statute, to settle, compromise or abandon claims; (3) that the Bank had failed to bring the Circuit Court's attention to the fact that she had been a necessary and indispensable party to the Bank's Counts I and II for will construction.

February 3, 1994 - the Bank filed a combined motion for involuntary dismissal and for its attorney fees (Appendix p. A-91). Helen A. Dick subsequently (March 7, 1994) filed an opposition to the Bank's combined motions—and a motion for sanctions against the Bank (Appendix p. A-96).

March 23, 1994 - Helen A. Dick filed a "Verified Petition for

Change of Venue to Woodford County" (Appendix p. A-102), seeking to have the case returned to Judge Baner, the Circuit Court judge who had entered the aforesaid 1984 orders. Two McLean County judges had recused themselves, after which the case was assigned to Judge Baner, a Woodford County judge who then sometimes traveled to McLean County to hear cases. The document by which the then chief judge assigned the case to Judge Baner is missing from the file but the fact of its filing appears in a record sheet (docket) entry of April 15, 1983. Correspondence as to venue is in the Appendix at pages A-106 through A-113 and includes two letters (pages A-107 and A-111) in which the Bank's attorney (John E. Fick) set forth his assumption that the case was to remain assigned to Judge Baner. Helen A. Dick's memo in support of her petition for change of venue was filed August 31, 1994 (Appendix p. A-114).

September 1, 1994 - Judge W. Charles Witte denied Helen A. Dick's said motion for change of venue and allowed the Bank's aforesaid combined motion for dismissal and attorney fees---except that he retained jurisdiction limited to a consideration of the amount of the Bank's attorney fees. The proposed (unsigned) order submitted by the Bank to Judge Witte begins at Appendix p. A-153; the Bank's letter of transmittal is at p. A-151.

Over Helen A. Dick's written objections (Appendix p. A-142), the aforesaid proposed order was entered by Judge Witte on September 26, 1994 (Appendix p. A-6).

September 30, 1994, Helen A. Dick filed a motion for rehearing (Appendix p. A-156).

November 28, 1994 - Judge Witte heard and denied Helen A. Dick's said motion for rehearing, causing the following notation to be entered on the record sheet:

"11-28-94 WITTE Whitwood Successor/Executor appears by counsel John Fick, Petitioner Helen A. Dick appears pro se. Petitioner's Motion for Rehearing heard and denied."

December 2, 1994 - Helen A. Dick filed a Notice of Appeal (Appendix p. A-172).

December 23, 1994 - Without filing a motion for leave to amend its aforesaid motion for attorney fees (Appendix p. A-91), the Bank filed a second document praying for attorney fees (Appendix p. A-175), which Helen A. Dick received the afternoon of December 24, 1994 (Christmas Eve Day). Monday, December 26, 1993 was a Holiday. Her December 27, 1994 affidavit as to her full payment of the Bank's said attorney fees was filed December 28, 1994 (Appendix p. A-178).

December 30, 1994 - with a cover letter (Appendix p. A-180) stating, among other things, that Helen A. Dick's payment of the fees requested by the Bank "moots the issues made in the Banks petition," the Bank submitted a proposed order which recited conduct of the parties as to the Bank's attorney fees.

January 4, 1994 - Judge Witte entered the aforesaid order reciting conduct of the parties (Appendix p. A-4).

February 23, 1995 - Helen A. Dick timely filed her opening brief that was due February 24, 1995 in the Appellate Court of Illinois, Fourth District.

March 7, 1995 - the Bank filed a motion to dismiss appeal (Appendix p. A-182), alleging that Helen A. Dick's December 2, 1994 notice of appeal was premature.

March 14, 1995 - Helen A. Dick filed a "Response/Opposition to Peoples Bank's Motion to Dismiss Appeal."

March 15, 1995 - the Appellate Court allowed the Bank's motion, over Helen A. Dick's said objection, and dismissed the appeal for an alleged lack of jurisdiction (Appendix p. A-3).

April 6, 1995 - Helen A. Dick filed a motion for reconsideration and for the court to vacate and set aside its March 15, 1995 order dismissing her appeal (Appendix p. A-186).

April 12, 1995 - the Appellate Court denied Helen A. Dick's said motion (Appendix p. A-2).

May 8, 1995 - Helen A. Dick delivered a Petition for Leave to Appeal to the Illinois Supreme Court, which said court filed May 9, 1995.

October 4, 1995 - the Illinois Supreme Court denied Helen

A. Dick's aforesaid petition for leave to appeal.

October 23, 1995 - Helen A. Dick sent a petition for rehearing to the Illinois Supreme Court (by next-day Express Mail), which was returned to her with a covering letter dated October 24, 1995 (Appendix p. A-199), by which the Clerk of the Illinois Supreme Court represented that "the Supreme Court Rules make no provision for filing a petition for rehearing of an order of this Court denying a petition for leave to appeal."

October 30, 1995 - Helen A. Dick sent a letter to the Honorable Michael A. Bilandic, Chief Justice of the Illinois Supreme Court (via next-day Express Mail), a copy of which is at Appendix p. A-200, together with copies of the Domestic Return Receipts showing that it was received in the Illinois Supreme Court building on November 1, 1995 and in his Chicago office/chambers on November 2, 1995.

In the fifth paragraph of said October 30, 1995 letter (Appendix p. A-200), Helen A. Dick quoted the Illinois Supreme Court December 17, 1993 Order wherein the Illinois Supreme Court amended its Rule 367, as to rehearing, and commented: "all types of reviewing court dispositions are subject to the rehearing procedures and time limits." Said Order begins at page (7) of the Official Reports, Illinois Supreme and Appellate Courts' Combined Advance Sheets, December 22, 1993, Vol. No. 26.

November 6, 1995, Helen A. Dick served an Affidavit of Intent to Apply to the United States Supreme Court for a Writ of Certiorari (Appendix p. A-203).

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ARGUMENT AS TO REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I.

THE ILLINOIS COURTS BEHAVED ERRATICALLY AND/OR CONTRARY TO ILLINOIS AUTHORITIES.

A.

The Illinois Supreme Court damaged petitioner by failing to follow its own Rule 367 as to petitions for rehearing.

October 4, 1995 - the Illinois Supreme Court entered an Order (Appendix p. A-1) denying the Rule 315 petition for leave to appeal. As set forth in detail within the foregoing Statement of Facts, Helen A. Dick served (and attempted to file) a petition for rehearing, pursuant to the Illinois Supreme Court's December 17, 1993 Order, which amended Illinois Supreme Court Rule 367 (a) to read, in pertinent part:

> "A petition for rehearing may be filed within 21 days after the filing of the judgment***."

Said December 17, 1993 Order also contained the comment: "all types of reviewing court dispositions are subject to the rehearing procedures and time limits (emphasis added)."

Helen A. Dick subsequently received the Illinois Supreme Court Clerk's October 24, 1995 letter (Appendix p. A-199), by which that court refused to file Helen A. Dick's said Rule 367 petition for rehearing.

The Illinois Supreme Court damaged Helen A. Dick by its refusal/failure follow its own aforesaid Rule 367. When she learned (on or about October 25, 1995) of said refusal/failure, three weeks had already gone by of the 90 days allowed (under Rule 13 of the Supreme Court of the United States) for her to prepare and file a petition for writ of certiorari after the entry of the aforesaid October 4, 1995 Order (Appendix p. A-1).

B.

The March 14, 1984 Order dismissing the Bank's action was and is void because entered without jurisdiction of Helen A. Dick.

Pursuant to an old Illinois case that is still good law:

> It is the duty of complainant to see and to know that he has before the court all necessary parties, or his decree will not be binding. It is the policy of the law to prevent a multiplicity of suits, and where the rights of all persons may be settled in one proceeding, the parties should not be harassed by other proceedings. Hopkins v. Roseclare Lead Co. (1874) 72 Ill. 373, 378.

Judge Baner's February 21, 1984 Order (Appendix p. A-13) shows that the Bank had not made Helen A. Dick a party to any of the counts then remaining (Counts I, II, III and IV) in the Bank's action---and that she had no standing to submit factual matters or present argument (e.g. as to then-pending cross-motions for summary judgment) or, as it later turned out, to prevent the Bank from dismissing its action.

A fiduciary's silence or failure to disclose amounts to a fraudulent concealment. Chicago Park District v. Kenroy, Inc. (1980) 78 Ill.2d 555, 562, 402 N.E.2d 181, 185.

The trustee Bank's pleading (Appendix p. A-14) shows that the Bank did not disclose (to beneficiary Helen A. Dick or to the Circuit Court) that Helen A. Dick was a necessary party to each and every count of the Bank's said pleading.

Although a trustee may ordinarily represent beneficiaries, a beneficiary is a necessary party where a cause of action involves a controversy among the beneficiaries. Restatement of Trusts 2d (1959) sec. 280 at "i", p. 41. The Bank's pleading (Appendix p. A-14) shows on its face that each of the seven (7) counts involved a controversy among will beneficiaries. The aforesaid Counts I, II, III and IV specifically involved conflicts of interests between George F. Dick III and other beneficiaries (including Helen A. Dick). However, George III was the only will beneficiary who was a party to said Counts I, II, III and IV.

Helen A. Dick's January 11, 1994 verified "Petition to Vacate" (Appendix p. A-47) shows that by that date she at

least had learned that she had been a necessary and indispensable party to each of the Bank's counts for will construction (e.g., Counts I and II of the Bank's pleading, Appendix p. A-14). On a bill for construction of a will, all beneficiaries are necessary and indispensable parties. 96 C.J.S. Wills, sec. 1088 at p. 765.

> [Even if] the court decides the issues in such a way that the absent parties would have no interest in the subject matter *** [necessary parties] are entitled to be present and to participate (emphasis added). *** The decree is binding only on those beneficiaries who were parties to the suit. Oglesby v. Springfield Marine Bank (1944) 385 Ill. 414, 426 and 430, 52 N.E.2d 1000, 1005 & 1007.

An order is void when entered by a court without jurisdiction of all necessary parties; a void order may be attacked at any time. Estate of Steinfeld (1994) 158 Ill.2d 1, 12, 630 N.E.2d 801, 806.

The March 14, 1984 Order of dismissal attached to the dismissal stipulation entered by the Bank and George F. Dick III (Appendix p. A-9) was and is void because Helen A. Dick was, as set forth above, a necessary and indispensable party---but was not a party to any of the counts then remaining in the Bank's action.

The March 2, 1984 Order (Appendix p. A-11) as to summary judgment of some issues is binding on those who were parties to the suit (i.e. the Bank and George F. Dick III) but is not binding on Helen A. Dick.

C.

The Appellate Court's Order allowing the Bank's motion to dismiss appeal---was in conflict with Illinois Supreme Court Rule 304 (b) (3) and section 2-1401 of the Illinois Code of Civil Procedure. (For pertinent texts, see A-208.)

A petition asking for the vacation of an order entered more than 30 days earlier must be considered a petition for

relief under section 2-1401 of the Illinois Code of Civil Procedure (now 735 ILCS 5/2-1401, formerly ch. 110, sec. 72). Schuman v. Department of Revenue (1967) 38 Ill.2d 571, 573, 232 N.E.2d 732, 733.

The prayer for relief in Helen A. Dick's January 11, 1994 verified "Petition to Vacate Order(s) Obtained by Fraud Upon the Court" (Appendix p. A-47) begins at Appendix p. A-64. In addition to prayers for accountings, for punitive damages and a general prayer for relief, petitioner prays:

> "A. That the March 14, 1984, order of dismissal be vacated and set aside.
>
> *****
>
> C. That the Court find that, under the circumstances, this pleading is a counterclaim timely filed against the Bank."

The prayer for relief did pray for the vacation of an order entered more than 30 days (i.e. 10 years) earlier---and thus (as set forth above) must be considered a petition for relief under the aforesaid section 2-1401 of the Illinois Code of Civil Procedure.

By the terms of Illinois Supreme Court Rule 304 (b) (3), a judgment or order granting or denying any of the relief prayed for in a petition under said section 2-1401 is appealable without special finding. (The pertinent texts of said section 2-1401 and Rule 304 (b) (3) are at Appendix p. A-208 to 209.)

The Bank's motion to dismiss appeal (Appendix p. A-182) relied on its false and fraudulent argument that Helen A. Dick could not appeal Judge Witte's September 26, 1994 and November 28, 1994 Orders (respectively, denying her petition to vacate and denying her motion for rehearing)---because the September 26, 1994 Order had not included a special finding.

The Appellate Court's March 15, 1994 Order (Appendix p. A-3) was obtained by the Bank's aforesaid fraudulent argument. If the Appellate Court had acted in keeping with

the aforesaid section 2-1401 and Rule 304 (b) (3), it would have allowed Helen A. Dick's April 6, 1995 "Motion for Reconsideration and to Vacate Order Obtained by Fraud" (Appendix p. A-186) instead of denying said motion by its order of April 12, 1995 (Appendix p. A-2).

II.

PETITIONER WAS DEPRIVED OF DUE PROCESS AND/OR EQUAL PROTECTION (U.S. CONST. AMEND. 5 AND/OR 14).

As set forth above, petitioner was denied due process during the Bank's action. She was a necessary and indispensable party but did not have the opportunity to be heard as to her rights/beneficial interests in these estates.

As also set forth above, petitioner was denied equal protection of the law when the Illinois reviewing court judges behaved erratically and/or contrary to Illinois statute, Supreme Court Rules and case law---which was violative of U.S. Const. Art. 6, para. 2.

III.

DUE PROCESS AND/OR EQUAL PROTECTION (U.S. CONST. AMEND. 5 AND/OR 14) IS NOT POSSIBLE WITHOUT, AMONG OTHER THINGS, A NATIONALLY UNIFORM JUDICIAL SYSTEM, A NATIONAL PLAN AS TO THE NEEDS AND RIGHTS OF CHILDREN, AND GOVERNMENT THAT IS REPUBLICAN (U.S. CONST. ART. 4, SEC. 4) DEMOCRATIC, AND AFFORDABLE?

A.

This Court may judicially notice that where civil (and presumably criminal) procedure varies from state to state, the opportunity to be heard (due process) and equal protection of the laws is not possible. A nationally uniform judicial system (utilizing Federal Procedure) would remedy this situation.

B

If petitioner had been taught Law in school, surely she

would have learned much earlier of her rights (e.g., her right to be heard in this action filed by the Bank in 1982).

The States ought to be providing an equal opportunity for education to all---and they are instead (at great expense to the taxpayers) failing to provide a solid education in the basic subjects needed by every citizen: reading, writing, mathematics and Law.

A national school system could be of great benefit to all (including but not limited to families who move from one state to another). Instead of "lock-step" learning, youngsters could leave their home rooms to attend reading, writing and math classes at their own levels---and return to their home rooms for classes geared to their age level (e.g. art, music, health and Law).

Unfortunately, we can't guarantee a peaceful (or even lawful) home to every child, but Jimmy and Susie and their classmates can learn, for example, what a battery is and that it is against the law. Children are expected in kindergarten to keep their hands to themselves and not push and shove when in line. Even if there is violence in their homes, if they learn in kindergarten that it is against the law, they won't take violence for granted as a necessary or acceptable way of life.

All persons are presumed to know what the law is and expected to obey it. Why aren't we teaching Law to everyone?

Government, including the aforesaid proposed national school system (which would come closer to providing equal protection of the laws than any school system petitioner knows of) ought to be supported by taxes collected directly from the States, each state taxed according to the census (U.S. Const. Art. 1, sec. 9, para. 4)---instead of government being supported by our current tax system.

C.

Pursuant to U.S. Const., Art. 1, sec. 8---

> The Congress shall have the power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general

> welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States (emphasis added) ***

---any act of Congress as to enterprise zones is violative of the Constitution (thus presumably unenforceable) and a burden on U.S. taxpayers, including 100% U.S. corporations.

D.

Petitioner respectfully suggests that Congress erred when passing legislation declaring religious corporations to be exempt from paying federal taxes. By so doing, Congress: (1) destroyed any possibility of a true separation between church and government (U.S. Const. Amend. 1); (2) placed temptation in the path of those whose true faith was Greed; (3) made it necessary for federal courts to waste time and tax dollars deciding issues such as what is or is not a religion.

As one example, petitioner refers this Court to Founding Church of Scientology v. United States (1969) 412 F.2d 1197, 1198, which refers to the origin of Scientology as having been an article written by L. Ron Hubbard in the May 1940 issue of ASTOUNDING SCIENCE FICTION magazine, describing a new "science" called Dianetics.

Another example is Church of the Chosen People, etc, v. United States (U.S.D.C., D. Minn., 1982) 548 F.Supp. 1247, 1249, where the plaintiff's articles of incorporation stated, in part, that the purpose of the corporation was: "to preach THE GAY IMPERATIVE [emphasis original] to the Chosen [i.e. gays] and breeder alike."

The simplest and most democratic solution is to eliminate the tax exempt status of all religious corporations (U.S. Const. Amend. 16). Each religious corporation will continue to be supported by its true believers.

As matters presently stand, each individual taxpayer is paying higher taxes than he would need to be paying (of the total amount collected by federal or state governments) if all religious corporations paid their fair share of income and property taxes. All religious corporations benefit by, at the

very least, having the protection of government (e.g. the freedom to worship) and the use of streets and roads to and from their various places of worship. At the present time, each person or corporation that does pay taxes is contributing towards a "free ride" for all religious corporations, including but not limited to religious corporations he, she or it (in the case of a taxpaying corporation) may be completely opposed to.

Petitioner, for example, is not a Roman Catholic and is completely opposed to that religious corporation's policy against birth control. She was appalled when she read that a former pope asked President Reagan to release more money to Third World countries---and just as appalled that the President apparently failed to suggest that the Pope use the wealth of and/or sell the treasures of the Vatican to help such over-populated countries, where the Roman Catholic church has fought (and has been winning its fight) against birth control.

If the Roman Catholic church/religious corporation were called on to defend its status as a "religion," would it pass the test? The Pope lives within the splendor of the Vatican; said corporation reputedly has more wealth than can be estimated with even near-accuracy; said corporation discriminates against women (e.g. a priest may own property, a nun may not); and said corporation has long imposed its prohibition against birth control even on non-Catholics. For instance, as late as the 1950's, it was against the law in Connecticut for a pharmacist to fill a gynecologist's prescription for a birth control device. Was this religion---or a far-reaching dictatorship affecting all residents of Connecticut?

> [Actually, petitioner suspects that even the Pope may be against at least some of the above---but does not know how to break with tradition.]

The Roman Catholic stand against birth control has contributed to over-population and hunger. It makes no sense for the Vatican to continue to increase its stored-up

wealth and/or for said religious corporation to be further rewarded by exempting it from paying income and property taxes.

Pursuant to U.S. Const. Art. 1, sec. 10, para. 3, "No State shall, without the consent of the congress*** enter into any agreement or compact with a foreign power," the States do not have a right, under the Constitution, to enter agreements as to enterprise zones and/or to enter agreements with a foreign power (the Vatican) not to tax the income and/or real property of the Roman Catholic church.

It would not be democratic/fair to tax one religious corporation without taxing all---but it may very well be that when non-catholics can stop providing a "free ride" to the Roman Catholic church, they might have more money left to provide support for their own churches.

E.

Children are citizens whose needs and rights are too-often ignored by politicians, thus the Supreme Court of the United States should give special consideration to these non-voting citizens.

A nationally uniform plan to provide for the needs and rights of children would best and most efficiently protect them, now that our society is so mobile. This would include a national school system, a national compilation as to the location of convicted sex offenders, and a national agency to receive and oversee the investigation of reports of alleged child abuse and/or neglect. Politicians in states that permit home-schooling have ignored children's needs for a safety net and have (certainly without intending to do so) turned those states into good places for secretive people (e.g., polygamists and incest offenders). Incest is not the only form of child abuse that thrives on isolation. Whetever "schooling" a parent wants to provide at home can be done during late afternoons, evenings, weekends and school vacations.

IV.

THE DIRECTORS OF THE BANK AND/OR THE ONE-BANK HOLDING COMPANY WERE CORRECT WHEN DESCRIBING (ON THE BOOKS OF THE BANK)---AS CONVERSION---THE TRANSFER OF ALL OF THE CAPITAL STOCK OF THE PEOPLES BANK OF BLOOMINGTON TO THE USE AND BENEFICIAL ENJOYMENT OF A ONE-BANK HOLDING COMPANY.

The actual Exhibits marked during the February 22, 1984 pre-trial conference (i.e. before the March 14, 1984 dismissal by stipulation between the Bank and George III) became part of and/or a supplement to the record during an appeal in a related matter. Stock Holders Ledger pages marked as the Bank's Exhibits #7, 8, 11 and 26 (see A-121 and A-137) bear the words:

"PBB SHARES CONVERTED TO
PEOPLES MID-ILLINOIS CORP."

as an entry of June 30, 1972 and/or July 3, 1972.

Pursuant to the Illinois Statute then in effect, namely, Illinois Revised Statutes (1971) Ch. 16 1/2, sec. 116 (8), the directors of a bank are required to cause suitable records to be kept. Directors of a bank and/or a bank holding company presumably understand the meaning of the word "conversion."

> Conversion. An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights. Any unauthorized act which deprives an owner of his property permanently or for an indefinite time. Unauthorized and wrongful exercise of dominion and control over another's personal property, to exclusion of or inconsistent with rights of owner. West's Law and Commercial Dictionary in Five Languages (1985).

At paragraph 8 of Count I of its complaint (Appendix p. A-14), a paragraph common also to Counts I and IV, the

Bank admitted that Peoples Mid-Illinois Corporation was a one-bank holding company. The Bank described what took place in mid-1972 as an "exchange" on a 1 for 1 basis." Such an exchange/gift to a one-bank holding company is not the payment of fair market value. It was and is conversion.

V.

HELEN A. DICK IS ENTITLED TO THE RELIEF SHE HAS PRAYED FOR---AND THE CASE SHOULD BE RETURNED TO JUDGE RICHARD M. BANER, OF WOODFORD COUNTY, FOR (AMONG OTHER THINGS) THE ACCOUNTINGS FOR WHICH SHE HAS PRAYED.

By failing in its duty (set forth at section B. at p. 18 above) to see and to know that Helen A. Dick was before the court as a party, the Bank prevented her from bringing facts and/or evidence (e.g., the aforesaid Stock Holders Ledger pages showing conversion) to Judge Baner's attention.

The Bank (her trustee!) breached its fiduciary duties to Helen A. Dick by (among other things) failing to make her a party to each count of its pleading.

Pursuant to Illinois law, where there has been a breach of trust, petitioner is entitled to accountings of these estates; laches and limitations do not apply to express active trusts. Piff v. Berresheim (1950) 405 Ill. 617, 624 - 626, 92 N.E.2d 113, 117-119. Petitioner is entitled to the accountings she has prayed for in the prayer for relief of her verified "Petition to Vacate Order(s) Obtained by Fraud Upon the Court' (Appendix p. A-47; the prayer begins at A-64).

Punitive damages are appropriate where the wrong involves a violation of fiduciary duty or where the fraud is gross. Home S. & L. Assoc. v. Schneider (1985) 108 Ill.2d 277, 284, 483 N.E.2d 1225, 1228. Levy v. Markal Sales Corp. (1st Dist. 1994) 268 Ill.App.3d 355, 379, 643 N.E.2d 1206, 1223. Punitive damages are appropriate to deter similar behavior on the part of this and other fiduciaries. No beneficiary should be treated as the Bank has treated this beneficiary.

The court may judicially notice that stress affects a person's health (both physical and emotional) which, in turn, affects his way of life and his relationships with family and friends.

Everything a reviewing court has said since the aforesaid void March 14, 1984 Order of Dismissal has, of course, been based upon the presumption that said void order had been valid. Helen A. Dick could not plead or argue what she did not know, including but not limited to that which the Bank, as her trustee, failed to disclose/fraudulently concealed from her Chicago Park Dist. v. Kenroy (1980) 78 Ill.2d 555, 562, 402 N.E.2d 181, 185.

The opinion in Dick v. Peoples Mid-Illinois Corp. (4th Dist. 1993) 242 Ill.App.3d 297, 298, 609 N.E.2d 997, 999. citing four related cases, shows that there is a great need for this Court to protect the public's interests (as well as the interests of this victim/beneficiary) by sending a clear and emphatic message to all corporate fiduciaries with regard to, among other things, the imposition of punitive damages. If the Court feels it can not decide the actual amount of punitive damages, petitioner hopes that it will at least set forth some guidelines by which the amount (e.g. double the actual damages) should be determined.

It was not proper for Judge Witte to deny Helen A. Dick's petition for change of venue (or, for that matter, to dismiss her petition to vacate Judge Baner's March 14, 1984 Order of dismissal). It is not appropriate for one circuit judge to review the orders of another. People ex rel. Kelly et al. v. Epstein (1974) 61 Ill.2d 229, 231, 335 N.E.2d 430, 431.

Judge Baner is still sitting as a circuit judge and he should be the judge to review his March 2, 1984 Order as to summary judgment of some issues (Appendix p. A-11) based on whatever factual matters and argument will, hopefully, be presented by Helen A. Dick after remand.

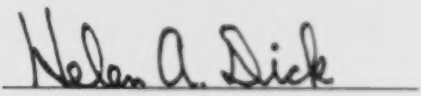
Because Helen A. Dick was a necessary and indispensable party to each and every count of the Bank's pleading---but was not a party to any of the counts remaining at the time of Judge Baner's February 21, 1984 Order (Appendix p.

A-13), any finding or order against her interests was and is moot as to her, but any finding against the interests of the Bank was and is binding on the Bank because it was party-plaintiff. A fraudulent or collusive suit can mot be used as a bar. Freasman v. Smith (1942) 379 Ill. 79, 86-87, 39 N.E.2d 367, 370-371.

CONCLUSION

FOR ALL THE FOREGOING REASONS, petitioner respectfully prays that a writ of certiorari be granted.

Respectfully submitted,



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